

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 09-H-10601-LMA
)	
DANIEL SCOTT BROWN)	DECISION
)	
Member No. 158025,)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this reproval violation proceeding, respondent **Daniel Scott Brown** is found culpable, by clear and convincing evidence, of violating conditions attached to a public reproval that was imposed on him in August 2008, in State Bar Court case number 08-O-10256.

In view of respondent's misconduct, the aggravating circumstances, and the lack of any mitigating circumstances, the court recommends, among other things, that respondent be suspended from the practice of law in California for one year, execution of that period of suspension be stayed, and that he be suspended for a minimum of 90 days. He is to remain suspended until the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

II. Pertinent Procedural History

On March 13, 2009, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing and properly serving a Notice of Disciplinary

Charges (NDC) on respondent by certified mail, return receipt requested, at his official membership records address (official address) under Business and Professions Code section 6002.1, subdivision (a). On March 16, 2009, a return receipt was received by the State Bar signed by “Dan Brown.”

Because respondent recently had been on disciplinary probation, the deputy trial counsel (DTC) assigned to this matter contacted respondent’s probation deputy to ascertain whether respondent’s probation file contained an address other than his official membership records address. However, there was no other address on file, other than respondent’s official membership records address.

On May 4, 2009, the assigned DTC attempted to reach respondent at his official membership telephone number. The DTC spoke with respondent and informed him of the proceedings in this matter. Among other things, the DTC informed respondent that: the NDC had been filed and served on March 13, 2009; a response to the NDC had been due on or about April 7, 2009; and the State Bar’s motion for entry of default was due to be filed on May 7, 2009. Respondent acknowledged receipt of the Notice of Disciplinary Charges and the State Bar’s intent to file a motion for entry of default.

Respondent did not file a response to the NDC as required. (Rules Proc. of State Bar, rule 103.)

On motion of the State Bar, respondent’s default was entered on May 26, 2009. Respondent was enrolled as an inactive member under Business and Professions Code, section 6007(e)¹ on May 29, 2009.

Respondent did not participate in the disciplinary proceedings.

¹ References to section (§) are to the Business and Professions Code, unless otherwise noted.

The matter was submitted for decision on June 22, 2009, following the filing of the State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 7, 1988, and has since been a member of the State Bar of California.

B. Violation of Repeal Conditions

On July 25, 2008, respondent signed a stipulation in State Bar Court case No. 08-O-10256, whereby he agreed to receive a public reproof and to comply with conditions attached to the reproof for a period of one year. The conditions attached to the reproof were specified in the stipulation that respondent signed.

On August 8, 2008, acting under the authority of Business and Professions Code section 6077, the State Bar Court issued an order imposing a public reproof upon respondent in case No. 08-O-10256 (Order). Pursuant to rule 9.19 of the California Rules of Court, the Order issued by the State Bar Court required respondent to comply with the stipulated conditions attached to the reproof.

The August 8, 2008 Order became final on August 29, 2008, and at all times thereafter has remained in full force and effect. Soon after August 8, 2008, respondent received notice of the State Bar Court order and reproof conditions.

On or about October 1 and November 7, 2008, the Office of Probation mailed respondent reminder letters setting forth the conditions of the reproof. Respondent received the letters.

As noted *ante*, respondent was required to comply with the conditions of the reproof for a period of one year from the effective date (August 29, 2008) of the Order, which conditions included the following:

1. Within 30 days of the effective date of discipline, respondent was required to contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss the terms and conditions of his reproof;²
2. Respondent was required to: submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period during which the public reproof is in effect and file a final report no earlier than 20 days prior to the expiration of the reproof period and no later than the last day of the period. Respondent was, therefore required to submit quarterly reports no later than October 10, 2008, and January 10, 2009.

Respondent, however, did not comply with the following conditions attached to his public reproof:

1. During the 30-day period, beginning on the effective date of the State Bar Court Order and expiring on or about September 28, 2008, respondent failed to contact the Office of Probation to schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his reproof, and failed to participate in such a meeting. As of the file date of the NDC, March 13, 2009, respondent still had not contacted the Office of Probation, nor had he met with his assigned probation deputy to discuss the terms and conditions of his reproof.

²Although both the NDC and the actual language of the condition itself refer to the conditions of respondent's "probation," these are actually conditions of respondent's reproof.

2. Respondent, who was required to submit quarterly reports on or before October 10, 2008, and January 10, 2009, did not file either of the two required reports as of March 13, 2009, the date of the filing of the NDC.

***Rule 1-110 of the Rules of Professional Conduct of the State Bar of California*³**

By failing to (1) contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his reproof and (2) submit the October 10, 2008 and January 10, 2009 quarterly reports to the Office of Probation, respondent failed to comply with conditions attached to a reproof administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 9.19 of the California Rules of Court in willful violation of rule 1-110 of the Rules of Professional Conduct of the State Bar of California (Rules of Professional Conduct).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

As respondent's default was entered in this matter, no evidence in mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent has a prior record of discipline. (Std. 1.2(b)(i).) Effective August 29, 2008, respondent was publicly reproofed with conditions for one year in State Bar Court case No. 08-O-10256. In the underlying matter, respondent stipulated to a violation of section 6103 of the

³ References to rule(s) are to the Rules of Professional Conduct, unless otherwise stated.

Although the NDC charged respondent with a violation of rule 1-110(A), the court notes that no subdivision (A) exists. The court, however, finds that respondent had sufficient notice that he was charged with a violation of rule 1-110 for failing to comply with conditions attached to an earlier reproof.

⁴ All further references to standards are to this source.

Business and Professions Code. In mitigation, respondent had no prior record of discipline. In aggravation, respondent engaged in multiple acts of misconduct, respondent's misconduct significantly harmed a client, and respondent failed to cooperate with the State Bar.

Respondent engaged in multiple acts of misconduct by violating several conditions of his reproof. (Standard 1.2(b)(ii).)

Respondent's failure to participate in this disciplinary proceeding prior to the entry of his default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

V. Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

For guidance in determining the appropriate discipline recommendation, the court first looks to the standards. (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Applicable in the instant matter, standard 2.9 provides that a willful violation of rule 1-110 of the Rules of Professional Conduct must result in suspension.

Standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Additionally, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior

proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (Id. at p. 251.) Nevertheless, while the standards are not binding, they are entitled to significant weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) The Supreme Court will reject a recommendation consistent with the standards only when the court entertains “grave doubts as to its propriety.” (*In re Naney* (1990) 51 Cal.3d 186, 190.) Even though the standards are merely guidelines for the imposition of discipline, there is “no reason to depart from them in the absence of a compelling reason to do so. ([Citation].)” (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

In the instant matter, respondent has been found culpable of failing to comply with several of the conditions attached to his earlier public reproof. In addition, there are several aggravating circumstances in this matter and no mitigating circumstances. Of particular concern to this court is respondent’s failure to participate in this disciplinary proceeding. Respondent’s failure to participate in this proceeding leaves the court without any understanding as to the underlying cause or causes for respondent’s misconduct or from learning of any mitigating circumstances which would justify this court’s departure from the discipline recommended by the standards.

In its brief on culpability and discipline the State Bar recommends, among other things, that “respondent be suspended from the practice of law for a period of one year, stayed, two years probation to include 90 days actual suspension. . . .” However, the court notes that in a default proceeding, “the appropriate time to consider imposing probation and its attendant conditions is when the attorney seeks relief from the actual suspension that may be imposed

following his or her default in a disciplinary proceeding.” (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal.State Bar Ct. Rptr. 103, 110.) Thus, the State Bar’s request for probation in this default proceeding is inappropriate.

In support of its recommendation that respondent be suspended from the practice of law for 90 days, the State Bar cites to *Conroy v. State Bar* (1990) 51 Cal.3d 799, and *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. After reviewing and considering the case law, as well as the standards set forth above, the court concludes that the appropriate discipline in this matter should include a 90-day minimum suspension of respondent from the practice of law.

VI. Recommended Discipline

The court hereby recommends that respondent **Daniel Scott Brown** be suspended from the practice of law in California for one year, execution of that period of suspension be stayed, and that respondent be suspended from the practice of law for a minimum of 90 days. He is to remain suspended until he files and the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

If respondent remains suspended for two years or more, it is further recommended that respondent must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), before his suspension will be terminated. (Rules Proc. of State Bar, rule 205(b).)

It is also recommended that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners

within one year after the effective date of the discipline imposed herein or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

The court also recommends that respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter. Failure to do so may result in disbarment or suspension.⁵

VII. Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: September _____, 2009

LUCY ARMENDARIZ
Judge of the State Bar Court

⁵ Respondent is required to file a rule 9.20(c) affidavit, even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)